

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TYRONE JACK)	
Claimant)	
VS.)	
)	Docket No. 241,773
NATIONAL ENVELOPE CORPORATION, NATIONAL)	
COLD STORAGE, AND CERTAINTED CORPORATION)	
Respondents)	
AND)	
)	
HARTFORD ACCIDENT AND INDEMNITY, WAUSAU)	
UNDERWRITERS INSURANCE COMPANY AND)	
SELF-INSURED)	
Insurance Carriers)	

ORDER

Respondent National Envelope Corporation and its insurance carrier Hartford Accident and Indemnity appeal Administrative Law Judge Robert H. Foerschler's February 28, 2001, Order of Dismissal. The Appeals Board heard oral argument on August 29, 2001.

APPEARANCES

Dennis L. Horner of Kansas City, Kansas, appeared on behalf of the claimant. Mark J. Hoffmeister of Overland Park, Kansas, appeared on behalf of National Envelope Corporation and its insurance carrier Hartford Accident and Indemnity. Mark E. Kolich of Kansas City, Kansas, appeared on behalf of CertainTeed Corporation, a qualified self-insured respondent. Omid Amjadi, of Kansas City, Missouri, appeared on behalf of National Cold Storage and its insurance carrier Wausau Underwriters Insurance Company.

RECORD

The record consists of the Workers Compensation Division administrative file. The Administrative Law Judge did not hold a hearing in this matter. Thus, the record does not contain a transcript of either testimony or arguments.

ISSUES

Respondent National Envelope Corporation (National Envelope) and its insurance carrier appealed the Administrative Law Judge's (ALJ) February 28, 2001, Order of Dismissal that dismissed CertainTeed Corporation (CertainTeed) as a party respondent in this matter. National Envelope contends that the ALJ exceeded his jurisdiction, when he entered the subject order, because he did not provide National Envelope with the opportunity to be heard. National Envelope also argues the ALJ exceeded his jurisdiction in entering the subject order because National Envelope under K.S.A. 44-534(a) has the right to join other employers in the case because those employers allegedly caused injury to claimant after claimant left the employment of National Envelope.

In contrast, CertainTeed contends the ALJ's Order of Dismissal should be affirmed. CertainTeed argues that the ALJ was correct and CertainTeed should be dismissed from this matter because the Workers Compensation Act does not provide a procedure for a named respondent to implead other employers for the purpose of determining proportionate liability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, and considering the parties' briefs and oral arguments, the Appeals Board (Board) finds the Order of Dismissal should be affirmed.

On February 12, 1999, claimant filed an Application for Hearing alleging he suffered a right shoulder injury on February 1, 1999, while employed by National Envelope. Then on October 6, 2000, National Envelope, through its insurance company's attorney, filed two separate Applications for Hearing, one naming CertainTeed as an employer and another naming National Cold Storage as an employer for the same February 1, 1999, alleged, work-related accident.

On February 7, 2001, CertainTeed filed a Motion to Dismiss arguing that there is no statutory authority for a named respondent to join another employer in a workers compensation case and since the claimant has not made a claim against CertainTeed, dismissal is the appropriate remedy.

The ALJ entered the February 28, 2001, Order of Dismissal without giving the parties an opportunity to be heard. At oral argument before the Board, all parties agreed that the ALJ should have held a hearing and given the parties an opportunity to present arguments before he entered the Order of Dismissal. All the parties also agreed, that the Board should decide the matter based on the parties' arguments before the Board and the matter, therefore, should not be remanded to the ALJ for a hearing.

In the ALJ's Order of Dismissal he found that "true interpleader" is not a remedy under the Act and dismissed CertainTeed from the proceedings.

National Envelope argues that claimant worked for CertainTeed after he left National Envelope's employment. National Envelope further contends that it has discovered that CertainTeed may be responsible for all or at least a portion of the workers compensation benefits requested by the claimant as the result of claimant working for CertainTeed. National Envelope cites K.S.A. 44-534(a), that states, in part, "the employer, . . . may apply in writing to the director for a determination of the benefits or compensation due or claimed to be due," as authority for an employer's right to join all employers in one claim that may be responsible for all or a portion of claimant's benefits.

CertainTeed argues, and the Board agrees, that statute grants the injured worker, the employer, the Kansas workers compensation fund or insurance carrier, the right to initiate proceedings for the purpose of determining claimant's right to compensation. That statute does not grant the employer the right to join other employers in a claim. National Envelope and its insurance carrier admit, in their brief, that the only purpose they had for filing the Application for Hearing that named CertainTeed as an employer was to shift all or a portion of the liability for benefits to CertainTeed.

The Board finds claimant made a claim for benefits arising out of a work-related injury while he was only employed by National Envelope. If claimant has a claim against CertainTeed, he has a right to assert that claim by filing a separate Application for Hearing and naming CertainTeed. Claimant does not purport to have any interest in whether CertainTeed is a party to his claim against National Envelope. Accordingly, National Envelope is the only party interested in CertainTeed becoming a party. Thus, the Board concludes, that when an injured worker's interests are not at stake, as in this case, the Workers Compensation Act does not provide a procedure for a named employer or its insurance carrier to join another employer or its insurance carrier in order to determine proportionate liabilities.¹

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Robert H. Foerschler's February 28, 2001, Order of Dismissal should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2001.

¹ See U.S.D.No. 501 v. American Home Life Ins.Co., 25 Kan. App. 2d 820, Syl. ¶1, 971 P.2d 1210, rev. denied 267 Kan. 889 (1999).

BOARD MEMBER

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- c: Dennis L. Horner, Attorney for Claimant
Mark J. Hoffmeister, Attorney for National Envelope Corp. and its Insurance Carrier
Mark E. Kolich, Attorney for CertainTeed Corp.
Omid Amjadi, Attorney for National Cold Storage and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Workers Compensation Director